

Permit No. WI-S062286

PROPOSED

AUTHORIZATION TO DISCHARGE STORM WATER FROM
CONSTRUCTION ACTIVITIES UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 et. seq., McClure Engineering Associates, Inc is authorized by the United States Environmental Protection Agency, Region 5, to discharge storm water associated with the Wal-Mart Store #1453-00 on the Oneida Nation Indian Reservation located at 2440 West Mason Street, Green Bay, Wisconsin, to Beaver Dam Creek (Oneida Tribal Waterway) in accordance with the conditions set forth herein.

This permit and the authorization to discharge shall expire at midnight, [Date], 2007. The permittee shall not discharge after the above date of expiration. The permittee shall notify U.S. EPA, Region 5, in writing within thirty (30) days after achieving final stabilization of the site; or immediately upon notice that another operator is taking over all of their responsibilities at the site at such time U.S. EPA, Region 5 may terminate this permit or transfer coverage. In order to receive authorization to discharge beyond the date of expiration, the permittee shall submit such information and forms as are required by the U.S. EPA, Region 5 no later than 180 days prior to the above date of expiration.

This permit shall become effective on the date of signature.

Signed and issued this _____ Day of _____, 2002

Jo Lynn Traub, Director, Water Division

NPDES Permits for Storm Water Discharges From Construction Activities in Oneida Nation Indian Reservation in the State of Wisconsin

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PART I. AUTHORIZATION UNDER THIS PERMIT

A. Site Description

The project consists of the addition of a grocery store to the existing Wal-Mart store, creating a Wal-Mart Super Center. All construction is within the exterior boundaries of the Oneida Indian Reservation located in the State of Wisconsin.

McClure Engineering Associates Incorporated, Rockford, Illinois (permittee) is currently planning the expansion of the Wal-Mart Store No. 1453-00 which is located at 2440 West Mason Street, Green Bay, Wisconsin. This project will add a 99,699 square foot grocery expansion onto the existing store creating a 211,052 square foot Super Center. The expansion will affect 14.7 acres of land, which will be cleared and graded as necessary to create a level, stable working surface to create the new addition and to expand the parking lot. The permittee expects to discharge storm water from construction activities associated with the expansion.

At this time, U.S. EPA, Region 5 is the permitting authority for discharges within the exterior boundaries of Indian Reservations with the Region 5 states.

B. Authorization to Discharge

This permit authorizes discharges of storm water associated with industrial activity as defined at 40 CFR 122.26(b)(14)(x).

C. Limitations on Coverage

The following storm water discharges are not authorized by this permit:

1. Storm water discharges that originate from the site after construction activities have been completed and the site has undergone final stabilization.
2. Non-storm water discharges or storm water discharges mixed with sources of non-storm water, except for those listed I.C.3.
3. The following non-storm water discharges from active construction sites are authorized by this permit provided the non-storm water component of the discharge is in compliance with Part III.E.9 (non-storm water discharges): discharges from fire fighting activities; fire hydrant flushes; waters used to wash vehicles where detergents are not used; water used to control dust in accordance with Part III.E.3.1; potable water sources including waterline flushes; routine external building wash down which does not use detergents; air conditioning condensate; uncontaminated ground water or spring water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

D. Terminating Coverage

The permittee shall notify U.S. EPA, Region 5, in writing, at the address in Part VI.C. of this permit within thirty (30) days after achieving final stabilization of the site, or immediately upon notice that another operator is taking over all of their responsibilities at the site. At such time U.S. EPA, Region 5 may terminate this permit or transfer coverage.

Part II. SPECIAL CONDITIONS

A. Prohibitions

1. Prohibition on non-storm water discharges. All discharges covered by this permit shall be composed entirely of storm water.

2. Prohibition on the discharge of excessive sediments. The discharge of sediments is prohibited, except in minor amounts associated with the proper implementation of sound soil erosion and sediment control practices.

3. Discharges Not in Compliance with Water Quality Standards. Discharges covered under this permit shall not cause or contribute to a violation an applicable water quality standard. Where a discharge is determined to cause or contribute to the violation of an applicable Tribal or State Water Quality Standard, the U.S. EPA, Region 5 will notify the permittee of such violation(s) and the permittee shall take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard, and shall document these actions in a letter to U.S. EPA, Region 5. Compliance with this requirement does not preclude any enforcement activity as provided by the Clean Water Act for the underlying violation.

4. Discharges threatening Endangered Species. Discharges covered under this permit shall protect federally listed endangered and threatened species and critical habitat. It has been determined by the U.S. Fish and Wildlife Service in their letter dated January 9, 2002, that there are no Federally listed endangered and threatened species or designated critical habitat in the area of the discharge.

5. Discharges adversely affecting Historic Properties. Discharges cover under this permit shall protect historic properties that are listed or are eligible to be listed in the National Historical Register. The permittee must comply with the recommendations made by the Oneida Cultural Heritage Department's letter dated May 21, 2002 (Attachment A).

B. Releases in Excess of Reportable Quantities

The discharge of hazardous substances or oil in the storm water discharges shall be prevented or minimized. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 C.F.R. part 302. Where a release containing a hazardous substance in an

amount equal to or in excess of a reporting quantity established under either 40 C.F.R. 117 or 40 C.F.R. 302, occurs during a 24 hour period:

1. The permittee is required to notify the National Response Center (NRC) (800-424-8802) in accordance with the requirements of 40 C.F.R. 117 and 40 C.F.R. 302 as soon as he or she has knowledge of the discharge;
2. The permittee shall submit within 14 calendar days of knowledge of a release a written description of the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken to minimize the chance of future occurrences to U.S. EPA, Region 5; and
3. The permittee must identify measures to prevent the recurrence of such releases and to respond to such releases.

C. Spills

This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

PART III. STORM WATER POLLUTION PREVENTION PLAN

The Storm Water Pollution Prevention Plan (SWPPP) includes a Storm Water Pollution Prevention Plan for the active construction activities and a Storm Water Management Plan as described in Parts III and IV, respectively.

When developing a SWPPP, the permittee must determine whether listed endangered or threatened species or critical habitat, or historic properties would be affected by the discharges. Any terms or conditions of a mitigation plan to protect listed species or critical habitat, or historic properties from the discharges must be incorporated into the SWPPP. Permittees must implement the applicable provisions of the SWPPP required under this part as a condition of this permit.

The SWPPP shall be signed in accordance with Part VIII.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.B (Retention of Records) of the permit.

A. General:

The permittee is required to develop and implement a storm water pollution prevention plan in accordance with the requirements of this Part for each construction site covered by this permit. The plan must be developed prior to initiation of construction activities and updated as appropriate. The terms and scheduled activities required prior to the initiation of construction

activities and must be in place prior to beginning construction activities. The plan requirements must be incorporated into the project's final plans and specifications and implemented as part of the project.

B. Purpose:

The purpose of the storm water pollution prevention plan is to prevent sediment and other pollutants related to construction activities from entering Waters of the United States during the construction phase. The permittee shall incorporate Best Management Practices (BMPs) into the project's final plans and specifications, which are designed to meet this goal and comply with the criteria indicated in Part III.D. of this permit. It is the permittee's responsibility to select the appropriate BMPs which satisfy these requirements.

C. Assigning Responsibility:

The permittee must identify who will implement and manage the erosion and sediment control BMPs before and during construction, and ensure that the plan will be implemented and stay in effect until the construction project is complete, and the entire site has undergone final stabilization. In addition, the final plans and specifications must clearly identify who will be responsible for the maintenance requirements identified in Part III.E. of this permit.

D. Criteria:

Applicants are recommended to use criteria for erosion and sediment control such as those found in EPA's menu of Best Management Practices (<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/menu.cfm>) and Storm Water Management for Construction Activities: Developing Pollution Prevention Plans And Best Management Practices, 10/01/92 (http://cfpub1.epa.gov/npdes/doc.cfm?document_type_id=6). This address will access the EPA Office of Water Publications Page. You must click on "Policy and Guidance Documents", then type in the title of the document.

Applicants may also use the erosion and sediment control criteria found in the Wisconsin Construction Site Management Practice Handbook (1993), Wisconsin Department of Natural Resources, Bureau of Water Resources Management, Non-Point Source and Land Management Section.

The SWPPP must indicate which erosion and sediment criteria is being used at the construction site.

E. Contents of the Plan

The storm water pollution prevention plan (SWPPP) shall include the following items:

- a. A description of the site and the nature of the construction activity;

- b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g., grubbing, excavation, or grading);
 - c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities including off-site borrow and fill areas;
 - d. Estimates, including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed;
 - e. Existing data describing the surface soils as well as subsoils from U.S. Soil Conservation Service information; and
 - f. The name of the receiving water(s) from U.S. Geological Service 7.5 minute series topographical maps or other appropriate source.
2. Each site map shall include a map showing the following items:
- a. Existing topography and drainage patterns, roads and surface waters;
 - b. Boundaries of the construction site;
 - c. Drainage patterns approximate slopes anticipated after major grading activities;
 - d. Areas of soil disturbance;
 - e. Locations of major structural and nonstructural controls identified in the SWPPP;
 - f. Locations where stabilization practices will be employed;
 - g. Areas which will be vegetated following construction;
 - h. Wetlands, and area extent of wetland acreage on the site and locations where storm water is discharged to a surface water or wetland; and
 - i. Information on whether listed endangered or threatened species, or critical habitat, are found in proximity to the construction activity and whether such species may be affected by the applicant's storm water discharges or storm water discharge-related activities.
 - j. Information on whether listed historic properties are found on the site and how to address the applicant's storm water discharges or storm water discharge-related

activities.

3. Each SWPPP shall include a description of appropriate controls and measures (i.e., BMPs) that will be implemented at the site to prevent pollutants in storm water discharges from reaching waters of the United States. The SWPPP must clearly describe for each major activity identified in the permit application and the general timing during the construction process that the measures will be implemented and which permittee is responsible for implementation. The description of erosion controls shall include, when appropriate, the following minimum requirements:
 - a. Description of interim and permanent stabilization practices, including a schedule for implementing the practices. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized;
 - b. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing, structural measures shall be installed on upland soils;
 - c. Management of overland flow at all sites, unless otherwise controlled by outfall controls;
 - d. Trapping of sediment in channelized flow;
 - e. Staging construction to limit bare areas subject to erosion;
 - f. Protection of down slope drainage inlets where they occur;
 - g. Minimization of tracking at all sites;
 - h. Clean up of off-site sediment deposits;
 - i. Proper disposal of building and waste materials at all sites;
 - j. Stabilization of drainage ways;
 - k. Installation of permanent stabilization practices as soon as possible after final grading; and
 - l. Minimization of dust to the maximum extent practicable.
4. No solid materials, including building materials, may be discharged in violation of applicable laws.

5. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g. no significant changes in the hydrological regime of the receiving water).
6. The Director may, upon request of a permittee or upon finding of just cause, grant modifications to the compliance and reporting schedules or any requirements of a storm water discharge permit.
7. All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition. If site inspections required by Part III.D.8. identify BMPs that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.
8. The permittee shall:
 - a. Conduct the following inspections by qualified personnel:
 1. Weekly inspections of implemented erosion and sediment controls; and
 2. Inspection of erosion and sediment controls within 24 hours after a precipitation event of 0.5 or greater which results in runoff during active construction periods.
 - b. Maintain weekly written reports of all inspections by or for the permittee that include:
 1. The date, time and exact place of the inspection;
 2. The name of the individual conducting the inspection;
 3. An assessment of the condition of the erosion and sediment controls;
 4. A description of any sediment and erosion control implementation performed; and
 5. A description of the present phase of the construction at the site.
9. Except for flows from fire fighting activities, sources of non-storm water listed in Part I.C.3 of this permit that are combined with storm water discharges associated with construction activity must be identified in the SWPPP. The SWPPP shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

10. The SWPPP shall clearly identify the contractor(s) and subcontractor(s) that will install and maintain erosion control and storm water management measures. This information may be added to the SWPPP after the permit application has been submitted to the EPA. It must be included in the SWPPP prior to commencement of land disturbing activities.

PART IV. STORM WATER MANAGEMENT PLAN REQUIREMENTS

Pollution caused by storm water discharges from the site after construction is completed, including, but not limited to, rooftops, parking lots, roadways and the maintenance of grassed areas shall be addressed by a storm water management plan. Inclusion in the plan of post construction management may not bind either future owners of the property nor any local governments to implement the management practices. A storm water management plan is not required for projects that do not alter runoff volumes or runoff quality from existing conditions and that do not include new development.

A. Practices During Construction

The plan shall include a description of management practices that will be implemented during the construction process to control peak flow, pollutants and runoff volume that will occur after construction operations have been completed. Storm water management practices shall be in accordance with applicable Federal and Tribal regulations. To the extent feasible, the plan shall consider efforts to increase on-site infiltration through conveyance, depression storage and reduction of impervious areas. Applicants are recommended to use the post-construction control measures in EPA's menu of Best Management Practices located on the EPA Office of Water web page (<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/post.cfm>) or equivalent measures in the Wisconsin Construction Site Management Practice Handbook (1993).

B. Long Term Practices

For any permanent structures, provisions shall be made for long-term maintenance. Long term maintenance provisions for storm water management structures should be made with the Tribe. If the Tribe agrees to take over the long-term maintenance responsibilities, a copy of the agreement shall be attached to the Notice of Termination. If the Tribe will not make such an agreement, alternative provisions shall be made for long-term maintenance of storm water management structures, and a copy of the mechanism by which it shall be implemented enacted attached to the written Notice of Termination described in Part I.D. of this permit.

C. Management Practices

Storm water management practices to control impacts from runoff volume and pollutants may include, but are not limited to: infiltration systems, flow attenuation, constructed wetlands, temporary or permanent ponds, combinations of these practices, or other methods which do not cause significant adverse impact on the receiving water or ground water. The plan shall include

an explanation of the technical basis used to select the practices to control pollution where flows exceed pre-development levels.

PART V. AMENDMENTS

- A. Changes to the storm water pollution prevention plan made during construction to accommodate phased construction, sequenced work, timing issues, or changed site conditions are allowable provided Part III. is complied with.
- B. Changes to the storm water management plan made during construction to accommodate changed site conditions are allowable provided Part IV is complied with.
- C. The permittee shall amend the SWPPP to improve the control of discharges of sediment and other materials, if the SWPPP fails to reduce the impacts of pollutants carried by construction site storm water runoff.
- D. If U.S. EPA, Region 5 notifies the permittee that changes are needed to the SWPPP, the permittee shall amend the SWPPP to improve the control of discharges of sediment and other materials. The permittee shall submit, within the date specified in the notice, an amended SWPPP.

Part VI. RETENTION OF RECORDS

A. Documents

The permittee shall retain copies of all reports required by this permit and records of all application data to be covered by this permit, for a period of at least three years after completion of the construction project.

B. Plans and Inspection:

- 1. The project's final plans and specifications shall incorporate the requirements of the Storm Water Pollution Prevention Plan under Part III and Storm Water Management Plan under Part IV and all inspection reports under Part III.D.8 must be:
 - a. available at the construction site in either the field office, or, inspector's vehicle, or contractor's vehicle, and,
 - b. available for inspection for the duration of this permit.
- 2. The following plans/records must be made available to Federal, Tribal, and local officials within 24 hours of request for the duration of the permit:

- a. Storm Water Pollution Prevention Plan developed in accordance with Part III of this permit (if a separate document from the project's final plans and specifications).
 - b. Storm Water Management Plan developed in accordance with Part IV of this permit.
 - c. All inspection reports.
 - d. All documents under Part VI.A.
3. The permittee shall keep a copies of the SWPPP, all changes to the SWPPP, and all inspection reports for three years after completion of the construction projects.

C. Address:

_____ All written correspondence concerning discharges from the facility covered under this permit shall be directed to U.S. EPA, Region 5, and the appropriate tribal office at the following addresses:

1. United States Environmental Protection Agency, Region 5
NPDES Programs Branch (WN-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604
2. A copy of the written correspondence must also be sent to the Oneida Nation Indian Reservation, if the discharge will occur, at the following address:

Tribal Water Quality Staff
Oneida Tribe of Indians of Wisconsin
P.O. Box 365
3759 W. Mason Street
Oneida, WI 54155

PART VII. REOPENER CLAUSE

- A. If there is evidence indicating that storm water discharges authorized by this permit are contributing to violations of applicable water quality standards, the permit may be modified by U.S. EPA, Region 5 to include different limitations and/or requirements.
- B. If there is evidence indicating that storm water discharges authorized by this permit are impacting federally listed endangered or threatened species or critical habitat, the permit may be modified to include requirements which are protective of endangered or

threatened species or critical habitat.

- C. If there is evidence indicating that storm water discharges authorized by this permit are impacting properties listed or eligible for listing on the Nation Register of Historic Places, the permit may be modified to include requirements which are protective of historic properties.

Part VIII. STANDARD PERMIT CONDITIONS

A. Duty to Comply

1. The Permittee Must Comply With All Conditions of this Permit

Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule, 61 Federal Register 69359 (December 31, 1996), as corrected by 62 Federal Register 13514 (March 20, 1997) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

- a. Criminal.

(1) Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing Endangerment. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$250,000, or by imprisonment for not more than 15 years, or both.

(4) False Statement. The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See section 309(c)(4) of the Clean Water Act).

- b. Civil Penalties. The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed \$27,500 per day for each violation.
- c. Administrative Penalties. The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:
 - (1) Class I Penalty. Not to exceed \$11,000 violation nor shall the maximum amount exceed \$27,500.
 - (2) Class II Penalty. Not to exceed \$11,000 per day for each day during which the violation continues nor shall the maximum amount exceed \$137,500.

B. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

C. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

D. Duty to Provide Information

The permittee shall furnish to the Director or an authorized representative of the Director any information which is requested to determine compliance with this permit or other information.

E. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the permit application information or in any other report to the Director, he or she shall promptly submit such facts or information.

F. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or by both.

G. Signatory Requirements

All written notices of termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All written notice of termination shall be signed as follows:
For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned to delegated to the manager in accordance with corporate procedures;
2. All reports required by this permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above and submitted to the Director.
 - b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

- c. Changes to Authorization. If an authorization is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new application must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
- d. Certification. Any person signing documents shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

H. **Oil and Hazardous Substance Liability**

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under any other law or regulation including but not limited to Section 311 of the CWA or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

I. **Property Rights**

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

J. **Severability**

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

K. **State/Tribal Environmental Laws**

- 1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable law or regulation under authority preserved by section 518 of the Act.

2. No condition of the permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

L. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems installed by a permittee only when necessary to achieve compliance with the conditions of this permit.

M. Inspection and Entry

The permittee shall allow the Director or an authorized representative of U.S. EPA, Region 5, the State/Tribe, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal owner/operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and
3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

N. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part IX. TERMINATION OF COVERAGE

A. Written Notice of Termination

The permittee shall notify U.S. EPA, Region 5 Regional office in writing, is signed in accordance with Part VIII.G of this permit, within thirty (30) days after achieving final stabilization of the site, or that another operator is taking over all of their responsibilities at the site. At such time U.S. EPA, Region 5 office may terminate this permit or transfer coverage, as appropriate. The written notice of termination shall include the following information:

1. The NPDES permit number for the storm water discharge;
2. An indication of whether the storm water discharges associated with construction activity have been eliminated (i.e., regulated discharges of storm water are being terminated) or another operator taking over all of their responsibilities at the site;
3. The name, address and telephone number of the permittee submitting the notice of termination;
4. The name of the project and street address (or a description of location if no street address is available) of the construction site for which the notification is submitted;
5. The following certification, signed in accordance with Part VIII.G (signatory requirements) of this permit. For construction projects with more than one permittee and/or operator, the permittee need only make this certification for those portions of the construction site where the permittee was authorized under this permit and not for areas where the permittee was not an operator:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that authorized by this permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with industrial activity under this permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release a permittee from liability for any violations of this permit or the Clean Water Act."

For the purposes of this certification, elimination of storm water discharges associated with construction activity means that all disturbed soils at the portion of the construction site where the permittee had control have been finally stabilized (as defined in Part X.I) and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time to ensure final stabilization is maintained, or that all storm water discharges associated with construction activities from the identified site that are authorized by this permit have otherwise been eliminated from the portion of the construction site where the permittee had control.

B. Addresses

The written notices of termination, signed in accordance with Part VIII.G of this permit, are to be submitted to the following agencies:

1. The written notice of termination shall be submitted to U.S. EPA, Region 5, Region 5 office, at the address indicates on Part VI.C.1;
2. A copy of the written notice of termination must also be sent to the Oneida Nation Indian Reservation, at the address indicates on Part VI.C.2;

PART X. DEFINITIONS

- A. “Best Management Practices (BMPs)” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practice to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- B. “Commencement of Construction Activities” means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.
- C. “CWA” means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.
- D. “Director” means the Regional Administrator of the United States of Environmental Protection Agency or an authorized representative.
- E. “Discharge of Storm Water Associated with Construction Activity” as used in this permit, refers to a discharge of pollutants in storm water runoff from areas where soil disturbing activities (e.g., clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants) are located.
- F. “Energy Dissipation” means methods employed at pipe outlets to prevent erosion. Examples include, but are not limited to; aprons, riprap, splash pads, and gabions which are designed to prevent erosion.
- G. “Exposed Soil Areas” means all areas of the construction site where the perennial vegetation (including trees, shrubs, and brush) has been removed. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site.
- H. “Facility or Activity” means any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.
- I. “Final Stabilization” means that either:
 - I. All soil disturbing activities at the site have been completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed. In such parts of the country, background native vegetation will cover less than 100% of the ground (e.g., arid areas, beaches). Establishing at least 70% of the natural cover of the native vegetation meets the vegetative cover criteria for final stabilization (e.g., if the native vegetation covers 50% of the ground, 70% of 50% would require 35% total cover for final stabilization;

- on a beach with no natural vegetation, no stabilization is required); or
 - II. For individual lots in residential construction by either: (a) The homebuilder completing final stabilization as specified above, or (b) the homebuilder establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization. (Homeowners typically have an incentive to put in the landscaping functionally equivalent to final stabilization as quick as possible to keep mud out of their homes and off sidewalks and driveways.); or
 - III. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturb that were not previously used for agricultural activities, such as buffer strips immediately adjacent to ``water of the United States," and area which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) above.
- J. "Impervious Surface" means a constructed hard surface that either prevents or retards the entry of water into the soil and cause water to run off the surface in greater quantities and at an increased rate of flow than prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas, and concrete, asphalt, or gravel roads.
- K. "Permanent Stabilization" means the establishment of permanent vegetative or non-vegetative cover.
- L. "Pollutant" is defined at 40 C.F.R. 122.2. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.
- M. "Sediment" means the product of an erosion process; solid material both mineral and organic, that is in suspension, is being transported, or has been moved by water, air, or ice, and has come to rest on the earth's surface either above or below water level.
- N. "Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.
- P. "Storm Water Associated with Industrial Activity" is defined at 40 C.F.R. 122.26(b)(14) and incorporated here by reference. Most relevant to this permit is 40 C.F.R. 122.26(b)(14)(x), which relates to construction activity including clearing, grading and excavation activities that result in the disturbance of five (5) or more acres of total land area, or are part of a larger common plan of development or sale.
- Q. "Temporary Stabilization" means the establishment of temporary vegetative cover

as an interim measure to prevent erosion during the period before permanent stabilization can be accomplished, or during periods prior to final grading.

R. "Toxic Pollutant" means any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act.

S. "Waters of the United States" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetland";
3. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflat, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate, commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraph 1. through 6. of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirement of the CWA (other than cooling ponds for steam electric generation stations per 40 C.F.R. 423) which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

